

## **REG-29-010 QUALITY JOBS ACT -- RECAPTURE**

010.01 If the company fails either to meet the required levels of employment or investment for the project by the end of the sixth year after the end of the year the application was filed or to utilize such project in a qualified business at or above the required levels of employment and investment required in the Quality Jobs Act for the entire entitlement period, all or a portion of the wage benefit credit shall be recaptured directly by the state from the company or shall be disallowed.

010.02 In no event shall any wage benefit credit be required to be paid back directly or indirectly by the employees, but instead shall be paid to the state by the company.

010.03 In the case of a company which has failed to meet the required levels within the required time period, all wage benefit credits shall be disallowed, and if any have been inadvertently received, they shall be paid by the company to the state.

010.04 In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period:

010.04A No wage benefit credits shall be allowed, and if already retained by the company, shall be paid to the Department of Revenue, for the actual year or years in which the required levels of employment or investment were not maintained;

010.04B For wage benefit credits allowed in prior years, one-tenth of the credits shall be recaptured from the company for each year the required levels of employment or investment were not maintained; and

010.04C For wage benefit credits for future years, one-tenth of the credits otherwise allowable shall not be allowed for each year the required levels of employment or investment were not maintained in previous years.

010.04D When the required levels are not maintained for more than one year any recapture shall be calculated on the allowable credits before any other recapture.

010.04E Any amount paid to the state under Reg-29-007.03, or subdivision 010.04A of this regulation shall not counted as either part of the recapture for any other subdivision, and as an allowable amount subject to recapture.

010.05 Any amounts required to be recaptured shall be deemed to be an underpayment of tax, shall be immediately due and payable, and shall constitute a lien on the assets of the company.

010.05A When wage benefit credits were received in more than one year, the credits received in the most recent year shall be recovered first and then the credits received in earlier years up to the extent of the required recapture.

010.06 Interest and penalties accrue as follows:

010.06A In the case of a company which has failed to meet the required levels within the required time period, interest accrues from the time the withholding should have been paid to the state;

010.06B In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, interest first accrues from the time of the original due date for the income return for the year in which the company failed to maintain the required levels; and

010.06C Penalties do not accrue until ninety days after the requirement for recapture or disallowance becomes known or should have become known to the company.

010.07 The recapture or disallowance required by this section may be waived by the Board if the Board finds the failure to attain or maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

(Section 77-4929, R.S.Supp., 1998, and section 77-4932, R.R.S. 1996. November 11, 1998.)